IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8127 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREE MAHALAXMI METAL QUARRY - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR TANVISH U BHATT for Petitioner(s) : 1,
MR U.R. BHATT, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 05/04/2006

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

The petitioner-firm is in business of crushing stones. The petitioner had paid sales tax under protest because the revenue authorities believed that crushing of stones is a manufacturing activity in view of law laid down by this court in the case of **State of Gujarat v. Lina Traders**, (1991) 82 STC 313. Ultimately, the Hon'ble Supreme Court in the case of **Commissioner of Sales Tax, U.P. v. Lal Kunwa Stone Crusher (P.) Ltd**., (2000) 3 SCC 525 and in the case of **State of Maharashtra v. Mahalaxmi Stores**, 2003(1) SCC 70, held that crushing of stones is not a manufacturing activity.

2. In view of the law laid down by the Hon'ble Supreme Court, the petitioner had not to pay any sales tax on the stone crushing business carried on by it. Therefore, an application for refund had been filed by the petitioner. The amount of refund has already been paid to the petitioner, but the question involved in the instant case is with regard to payment of interest on the refund which, according to the petitioner, must be paid to it.

3. The petitioner has been refunded the amount of tax paid under protest with interest thereon with effect from the Assessment Year 1993-94 because, according to the respondent authorities, the provision with regard to payment of interest on the refund had been enacted under sec. 54(1)(aa) of the Gujarat Sales Tax, 1969 (hereinafter referred to as '**the Act**'), which came into force with effect from 1.4.1993 and, therefore, it would be applicable only to Assessment Year 1993-94 and onwards.

4. Thus, it is the case of learned AGP Shri Uday Bhatt that the petitioner is not entitled to any interest on the amount of refund claimed by the petitioner, which had been paid in respect of Assessment Year 1992-93 and prior thereto.

5. It is not in dispute that the petitioner had paid the amount of sales tax under protest. Ultimately, the Hon'ble Supreme Court in the case of **Commissioner of Sales Tax, U.P. v. Lal Kunwa Stone Crusher (P.) Ltd**. (supra) has held that stone crushing activity is not a manufacturing activity and

in the circumstances the petitioner could not have been constrained to pay any sales tax in respect of the stone crushing business carried on by it.

6. The only question involved in the petition is with regard to amount of interest for the period prior to Assessment Year 1993-94 as, according to the learned AGP, sec. 54(1)(aa) of the Act makes it obligatory on the part of the government to pay interest on the amount of refund only from the Assessment Year 1993-94.

7. Looking to the law laid down by the Hon'ble Supreme Court in the case of **Sandvik Asia Ltd. v. Commissioner of Income-tax-I, Pune and others**, JT 2006 (2) SC 7, it has been held that the assessee should be compensated by payment of interest, if his money had been retained by the government authorities without any justification. Looking to the facts of the said case, the Hon'ble Supreme Court had allowed simple interest at the rate of 9% p.a. to those whose money had been retained by the revenue. Looking to the law laid down by the Hon'ble Supreme

Court in the aforesaid case, so as to compensate the petitioner, we direct that the petitioner shall be paid simple interest @ 9% p.a. on the amount, which had been retained by the revenue authorities, for the Assessment Year prior to 1993-94. The said amount of interest shall be calculated within one month from the date of receipt of the writ of this court by respondent No. 3 and the amount shall be paid to the petitioner within two months from the date of receipt of writ of this court. If the amount is not paid within two months from the date of receipt of the writ by the concerned respondent, the petitioner shall be entitled to interest @ 15% p.a. after completion of two months from the date of receipt of the writ.

8. In view of the above direction, the petition stands disposed of as allowed. Rule is made absolute to the above extent with no order as to costs.

Direct service is permitted.

(Anil R. Dave, J.) (Harsha Devani, J.)

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